

**Myers Men, Inc. and Teamsters Local Union No.
773, International Brotherhood of Teamsters,
AFL-CIO. Case 4-CA-20805**

April 12, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS OVIATT
AND RAUDABAUGH

Upon a charge filed by Teamsters Local Union No. 773, International Brotherhood of Teamsters, AFL-CIO, the Union, the General Counsel of the National Labor Relations Board issued a complaint against Myers Men, Inc., the Respondent, on October 23, 1992, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file an answer.

On March 18, 1993, the General Counsel filed a Motion for Summary Judgment. On March 22, 1993, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states that unless an answer is filed within 14 days of service, "all the allegations in the Complaint shall be considered to be admitted to be true and shall be so found by the Board." Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated November 24, 1992, notified the Respondent that unless an answer was received by December 3, 1992, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a Pennsylvania corporation, with an office and place of business in Allentown, Pennsylvania, has been engaged in the interstate and intrastate transportation and storage of freight. During the

year preceding issuance of the complaint, the Respondent derived gross revenues in excess of \$50,000 for the transportation of freight from the Commonwealth of Pennsylvania directly to points outside the Commonwealth of Pennsylvania. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent constitute a unit appropriate for purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All truck drivers, mechanics and warehousemen employed by the Respondent, excluding guards and supervisors as defined in the Act.

At all material times, the Union has been the designated exclusive collective-bargaining representative of the unit employees and has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from March 1, 1991, to February 28, 1994. At all material times, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit employees.

Since in or about December 1991, the Respondent has each month withheld monthly union dues monies from employees' paychecks but has failed to remit the monies to the Union in a timely fashion. This is a mandatory subject for the purposes of collective bargaining because it relates to wages, hours, and other terms and conditions of employment of the unit employees. The Respondent engaged in this conduct without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

Since in or about March 1992, the Respondent has failed to continue in effect all the terms and conditions of its collective-bargaining agreement by failing to provide health insurance coverage for employees pursuant to article 26 of the agreement, as modified by the Respondent and the Union in or about March 1991. This is a mandatory subject for the purposes of collective bargaining because it relates to wages, hours, and other terms and conditions of employment of the unit employees. The Respondent engaged in this conduct without the Union's consent, without prior notice to the Union, and without affording the Union an opportunity to bargain with the Respondent with respect to this conduct.

On or about April 29, 1992, the Union, in a letter with an attached questionnaire consisting of 6 pages with 44 numbered items, requested that the Respondent

furnish it with certain information concerning the Respondent's relationship with another corporation, CAM Leasing. The information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees. Since on or about April 29, 1992, the Respondent has failed and refused to furnish the Union with the information requested.

CONCLUSIONS OF LAW

1. By each month since about December 1991 withholding monthly union dues monies from employees' paychecks but failing to remit the monies to the Union in a timely fashion, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(d) and Section 2(6) and (7) of the Act and in violation of Section 8(a)(1) and (5) of the Act.

2. By failing to continue in effect all the terms and conditions of its collective-bargaining agreement by failing to provide health insurance coverage for employees pursuant to article 26 of the agreement, as modified by the Respondent and the Union in or about March 1991, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(d) and Section 2(6) and (7) of the Act and in violation of Section 8(a)(1) and (5) of the Act.

3. By failing and refusing to furnish the Union with the necessary and relevant information requested on or about April 29, 1992, in a letter with an attached questionnaire consisting of 6 pages with 44 numbered items concerning the Respondent's relationship with another corporation, CAM Leasing, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(d) and Section 2(6) and (7) of the Act and in violation of Section 8(a)(1) and (5) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent has violated Section 8(a)(1) and (5) by failing since December 1991 to timely remit to the Union the dues monies deducted each month from employees' paychecks, we shall order the Respondent to cease and desist from such unlawful conduct and to remit to the Union those dues monies in a timely fashion, with interest as computed under *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to provide health insurance coverage pursuant to article 26 of its agreement as modified by the Respondent and the

Union in or about March 1991, we shall order the Respondent to make whole its unit employees by making all payments that have not been made and that would have been made but for the Respondent's unlawful failure to make them, including any additional amounts applicable to such delinquent payments as determined in accordance with the criteria set forth in *Merryweather Optical Co.*, 240 NLRB 1213 (1979). In addition, the Respondent shall reimburse unit employees for any expenses ensuing from its failure to make such required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970), enfd. 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, supra.

Finally, having found that the Respondent has violated Section 8(a)(1) and (5) by failing to furnish necessary and relevant information to the Union, we shall order that, upon request, it furnish all information set forth in the questionnaire of April 29, 1992.

ORDER

The National Labor Relations Board orders that the Respondent, Myers Men, Inc., Allentown, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Each month since about December 1991 withholding monthly union dues monies from employees' paychecks but failing to remit the monies to the Union in a timely fashion.

(b) Failing to continue in effect all the terms and conditions of its collective-bargaining agreement by failing to provide health insurance coverage for employees pursuant to article 26 of the agreement, as modified by the Respondent and the Union in or about March 1991.

(c) Failing and refusing to furnish the Union with the necessary and relevant information requested on or about April 29, 1992, in a letter with an attached questionnaire consisting of 6 pages with 44 numbered items concerning the Respondent's relationship with another corporation, CAM Leasing.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Remit to the Union in a timely fashion the monthly union dues monies which have been withheld from employees' paychecks, as set forth in the remedy section of this decision.

(b) Provide health insurance coverage for employees pursuant to article 26 of the parties' agreement as modified by the Respondent and the Union in or about

March 1991 and make employees whole for its failure to do so, as set forth in the remedy section of this decision.

(c) Upon request, provide the Union with the necessary and relevant information it requested by letter of April 29, 1992, with attached questionnaire consisting of 6 pages with 44 numbered items.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of monies due under the terms of this Order.

(e) Post at its facility in Allentown, Pennsylvania, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain in good faith with Teamsters Local Union No. 773, International Brotherhood of Teamsters, AFL-CIO, the exclusive representative of our employees in the following unit appropriate for purposes of collective bargaining within the meaning of Section 9(b):

All truck drivers, mechanics and warehousemen employed by the Respondent, excluding guards and supervisors as defined in the Act.

WE WILL NOT fail to remit union dues monies withheld each month from employees' paychecks to the Union in a timely fashion.

WE WILL NOT fail to honor the terms of our collective-bargaining agreement with the Union by failing to provide adequate health insurance coverage for employees pursuant to article 26 of our agreement as modified by agreement with the Union in or about March 1991.

WE WILL NOT fail to provide the Union with all necessary and relevant information which it requested by letter of April 29, 1992, concerning any relationship which we may have with another corporation, CAM Leasing.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL remit to the Union in a timely fashion all dues monies withheld from employees' paychecks each month, with interest.

WE WILL provide health insurance coverage for our unit employees pursuant to article 26 of our agreement as modified by agreement with the Union in or about March 1991 and WE WILL make our employees whole, with interest, for our failure to do so.

WE WILL, on request, provide the Union with all necessary and relevant information which it requested by letter of April 29, 1992, concerning any relationship which we may have with another corporation, CAM Leasing.

MYERS MEN, INC.